

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6190 of 1993

with

SPECIAL CIVIL APPLICATION No 6162 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JETUNIBIBI JANUBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6190 of 1993
MR PV HATHI for Petitioners
MR K C SHAH,ASSTT.GOVERNMENT PLEADER for Respondent No. 1
Respondent Nos.2 served.
MR YM THAKKAR for Respondent No. 3
 2. Special Civil ApplicationNo 6162 of 1993
MR JR NANAVATI for Petitioners
MR K.C.SHAH,ASSTT.GOVERNMENT PLEADER for Respondent No. 1
MR YM THAKKAR for Respondent No. 2, 3
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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 01/08/96

ORAL JUDGEMENT

In both these petitions under Articles 226 and 227 of the Constitution of India, common questions are raised in respect of the same subject matter. Therefore, they are being disposed of by this common judgment.

According to the case of the petitioners, one Janubhai Gulam Husein had filled in form No. I under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 ('ULC Act' for short) before respondent No.2-competent authority and Deputy Collector, ULC, Ahmedabad on 12.8.1976 wherein he had disclosed the land held by him. He died on 3.6.1980 leaving behind him his widow Jetunbibi, five sons and seven daughters.

It is the case of the petitioners that names of heirs and legal representatives of the deceased came to be entered in the revenue record in the year 1982 in form 7-12 and 8 in respect of survey number 104 situated in Vastrapur, Ahmedabad. Since all heirs and legal representatives were interested in the property disclosed by the deceased, all were entitled to service of draft statement under section 8(1) with a notice under section 8(3) of the ULC Act, as contended by the petitioners.

Respondent No.2 competent authority- issued notice in the name of the deceased on 5.1.1985. The notice was received by the son of the deceased Gulam Rasul who is the petitioner in Special Civil application No. 6162 of 1983. The petitioners however, on receipt of notice alongwith draft statement intimated the competent authority about death of the original land-holder Janubhai Gulam Husein and also furnished names of heirs and legal representatives of the deceased. The petitioners requested to issue notice to all interested persons as required under the provisions of section 8(3) of the ULC Act. In spite of intimation about names of heirs and legal representatives of the deceased, the competent authority did not issue notice to other heirs and legal representatives of the deceased.

Respondent No.2-competent authority passed the final order whereby he declared land bearing survey number 104 admeasuring 3387 sq.mts. of Vastrapur as surplus vacant land and issued final statement under section 9. The petitioner Gulam Rasul being aggrieved by the said order of the competent authority, preferred an appeal under

section 33 of the ULC Act before respondent No.1. Appeal No.17/92 filed by the petitioner Gulam Rasul came to be dismissed by a judgment and order dated 27.4.1992.

Special civil application no. 6190 of 1993 is filed by the two petitioners who are heirs and legal representatives of the original land holder. Petitioner No.1 is the widow and petitioner No.2 is the son of the deceased-land holder. They have filed this petition without filing an appeal under Section 33 of the ULC Act. The contentions raised therein are also common.

On behalf of the petitioners, the following contentions are raised :

1. That the impugned orders of competent authority and the appellate authority are in complete breach of the mandatory requirements of the provisions of the ULC Act and the Rules, in that, it is submitted that the land owner was deceased Janubhai who expired before the inquiry was held in respect of form No.I and, therefore, notice in the name of the deceased which was received by petitioner Gulam Rasul only, is not sufficient compliance of the provisions. Notice ought to have been sent to all the heirs and legal representatives.
2. That the authorities below failed to consider the meaning of the Urban land, in that, it was submitted that Vastrapur land bearing survey number 104 admeasuring about 4 acres-33 gunthas in which the deceased-land holder had one-fourth share was an agricultural land as per the revenue record and was in cultivation. Therefore, it was not within the scope of expression 'vacant land' and, therefore, it was required to be excluded.
3. That other properties situated at Rakhial and DaniLimda are constructed properties and therefore also, they cannot be said to be vacant land.

The learned Assistant Government pleader Mr. Shah for the respondent-authority has seriously opposed the aforesaid contentions. He has also raised a contention that there was complete representation of the estate and, therefore, in absence of service to all the heirs and legal representatives, no prejudice is caused. He has thus supported the impugned orders.

On behalf of the petitioners, firstly reliance is placed on a decision of the apex court in Atia Mohammadi Begum vs. State of U.P. AIR 1993 SC 2465. Placing reliance on the aforesaid decision, it is contended that the matter is required to be remanded to the competent authority for a fresh inquiry. It is held in Atia Begum's case (supra) that the scheme of the ULC Act supports the construction that the Explanation (c) to section 2 (o) means that if the land has been specified in the master plan existing at the time of commencement of the Act for a purpose other than agriculture, then the land shall not be deemed to be mainly used for the purpose of agriculture by virtue of the Explanation and not if the land is specified in a master plan prepared after the commencement of the Act. It is further held that the plain language of Explanation (c) bears this construction and requires it to be so construed in order to harmonise it with the other provisions and scheme of Just as the holder of the land cannot by his subsequent actions reduce the area of the vacant land in excess of the ceiling limit, the authorities too cannot by any subsequent action increase the area of the excess vacant land by a similar action.

The master plan defined in section 2(h) and referred in the definition of 'urban land' in section 2(o), including Explanation (C) therein is obviously a master plan prepared and in existence at the time of commencement of the ULC Act when by virtue of section 2 of the ULC Act, rights of the holder of the land under the Act get crystallized and extinguished his right to hold any vacant land in excess of the ceiling limit. The proceedings for determining the vacant land in excess of the ceiling limit according to the machinery provided in the ULC Act is merely for quantification and to effectuate the rights and liabilities which have crystalised at the time of commencement of the ULC Act. In the present case, it is admitted that there is nothing on record to show as to whether there was a master plan at the commencement of the ULC Act or not. Therefore, the matter is required to be remanded to the competent authority to ascertain and decide as to -

(i) Whether the said property is agricultural property or not;

(ii) Whether the agricultural property was used as such for agricultural purpose and

(iii) whether there was a master plan at the commencement

of the Act.

The respondent authorities have held that constructions made on Raikhad, Dani Limda and Rakhial lands are not shown to be authorised constructions. The competent authority had not issued notices to the petitioners and other heirs and legal representatives. Leaving the question of applicability of the principles of sufficient representation of estate by some of the heirs open in view of the clear statement at the bar that names and addresses of remaining heirs will be furnished to the competent authority within six weeks. This will obviate future legal complications. Therefore, it would be necessary to give an opportunity to the petitioners and heirs and legal representatives to lead evidence to show that the construction on the said three properties was authorised construction.

It was contended by the learned Assistant Government pleader that the petitioners in Special civil application No.6190 of 1993 should be directed to file an appeal under section 33 of the ULC Act. This submission is not required to be decided in view of the fact that the matter is required to be remanded and no useful purpose will be served by directing the petitioners in this petition who are only two legal heirs of the deceased to resort to appeal. Since the entire matter is required to be thrashed out in accordance with law, the aforesaid contention cannot be accepted.

Having regard to the facts and circumstances, the matter is remanded to the competent authority, respondent No.2, in both these petitions for a fresh inquiry and proceedings in respect of form No.I under section 6(1) of the ULC Act, after giving an opportunity of hearing and leading evidence to the petitioners and also after issuing notices to other heirs and legal representatives whose names and addresses will be furnished by the petitioner Gulam Rasul within a period of six weeks from today to the competent authority. It is jointly declared at the bar that if names and addresses of other heirs and legal representatives are not furnished within six weeks from today by the petitioners, it will be open for the competent authority to proceed with the case against the petitioners and decide it in accordance with law, in view of peculiar facts and circumstances and premise that there was sufficient representation of the estate of the deceased.

The impugned orders of the respondent authorities are

quashed and set aside and the matter is remanded to the competent authority for a fresh inquiry and decision in accordance with law after giving an opportunity of hearing to the concerned parties. Rule in each of the petitions is made absolute to the aforesaid extent with no order as to costs.

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